

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of

PACIFIC BELL PETITION FOR
RULEMAKING TO AMEND
SECTION 69.106 OF THE
COMMISSION'S RULES

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RM-8496

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**OPPOSITION OF FIRST FINANCIAL MANAGEMENT CORPORATION**

First Financial Management Corporation ("FFMC"), by its attorneys and pursuant to Section 1.405 of the Commission's rules, hereby submits its opposition to the above-captioned petition for rulemaking ("Petition") in which Pacific Bell seeks to restructure the switched access local switching rate element by establishing a new per-message call setup charge in addition to the existing per-minute usage charge. Pacific Bell's proposal should be denied. Adoption of the Petition would serve only to initiate a rulemaking proceeding that would penalize efficient use of the switched public network, hinder the continued development of the national information highway, and impose unwarranted costs on electronic authorization processors. Moreover, because Pacific Bell has not met its burden of proof under the Commission's price cap rules to show that the restructured rate element is not unreasonably discriminatory or would not have an adverse effect on competition, the Petition should be denied on that basis alone.

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I. BACKGROUND

FFMC is a major information services company which offers a broad range of data processing and related services to a large and diverse customer base. With annual sales of more than \$1 billion, FFMC is a leader in processing transactions for financial institutions, providing data imaging, micrographics, electronic data base services and debt collection, as well as health and pharmaceutical claims processing. FFMC also is one of the largest on-line merchant credit card point-of-sale ("POS") processors in the country, offering electronic authorization, processing and settlement services. Because grant of Pacific Bell's Petition would initiate a rulemaking that likely would result in significantly increased local exchange costs to its POS transaction operations, FFMC has a substantial interest in this proceeding.

Pacific Bell requests that the Commission initiate a rulemaking proceeding to allow the switched access local switching rate governed by Section 69.106 of the Commission's rules to encompass a per-message call setup charge in addition to the current per-minute usage charge.^{1/} The local switching rate

^{1/} 47 C.F.R. § 69.106(a) currently reads as follows:

charges that are expressed in dollars and cents per access minute of use shall be assessed [sic] upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign service.

element compensates local exchange carriers ("LECs") for their local switching costs. These are the costs associated with establishing the signalling portion of calls -- call setup -- and with call maintenance which is related to call duration.

Pacific Bell claims that the current local switching rate structure creates an uneconomic scheme in which long calls subsidize short calls. Petition at 1. Specifically, Pacific Bell claims that it costs almost five times more to set up a call than to provide a minute of use. Id. at 6-7. Because of the growth in short duration transaction calls, Pacific Bell claims that in the future it may not be able to recover all of its costs using the current switched access rate structure. Id. at 7. As discussed below, Pacific Bell has focused on many of the wrong issues, such that grant of the Petition would initiate a rulemaking proceeding that in the end likely would have a serious adverse competitive impact on the POS transaction industry without significant countervailing public benefit.

II. ADOPTION OF PACIFIC BELL'S PROPOSAL WOULD PENALIZE EFFICIENT USE OF THE PUBLIC SWITCHED NETWORK

As described in the Petition, the public switched network now is being used to provide a host of new and innovative services that did not exist, or were used much less frequently, just a decade ago. Pacific Bell describes the growth of some of these new services and technologies, including short-burst fax messages, new paging services, as well as credit card, check and debit card verification and authorization services. Pacific Bell

fails to describe, however, how these information and POS transaction services have become an extremely important component of the nation's economy and have led the growth in one of the most dynamic, and increasing, segments of U.S. industry. As the U.S. Department of Commerce recently noted:

information services will continue to be among the fastest growing sectors of the economy as government and industry depend on them for increasing productivity and efficiency and in developing innovative solutions to problems.^{2/}

Indeed, the efficient, short-duration transaction services described by Pacific Bell are the vanguard of the information highway, bringing more and more services and conveniences to American consumers and increasing the productivity of American business. For example, POS credit card, check and debit card transaction validation services not only save American businesses billions of dollars by preventing credit fraud but also promote retail sales nationwide through efficient and time-saving processing of consumer transactions. Pacific Bell does not address its proposal's impact on this growing industry.^{3/}

Pacific Bell in effect is proposing to penalize short duration callers for their efficiency in at least two ways. First, grant of the Petition would penalize efficient users for

^{2/} U.S. Industrial Outlook 1994, U.S. Department of Commerce, at 25-1 (January 1994).

^{3/} See Section IV for a discussion why Pacific Bell's failure to address this issue requires the Commission to dismiss the Petition.

the increased volume of transactions their efficiency has served to develop. If credit card and debit card validations at grocery stores, gasoline pumps, and retail stores were not so quick and efficient, fewer consumers and merchants would use them, and the volume of short duration calls would never have risen to the level which Pacific Bell apparently now considers problematical.

Second, grant of the Petition would penalize those efficient POS transaction processors, such as FFMC, that have invested heavily in equipment and software to develop sufficient capacity to process the millions of POS transaction they handle every year. In describing call setup and the effect of short calls on costs, Pacific Bell neglects to note that it also incurs call setup costs for "busy" or "no answer" calls; yet the Petition proposes to recover call setup costs disproportionately from the most efficient users, those POS processors like FFMC who not only minimize call duration, but who also have invested in state-of-the-art database facilities, software and trunk capacity to minimize the possibility of non-completed "busy" or "no answer" calls.

POS processors must invest in state-of-the-art facilities because the POS transaction industry is highly competitive and is highly sensitive to changes in per-transaction costs. Contrary to Pacific Bell's claim, Petition at 8-9, therefore, establishment of a call setup charge that will target the POS industry disproportionately would likely promote, rather

than discourage, uneconomic bypass in violation of Commission policies.^{4/}

In the event the Commission wishes to consider the desirability of allowing call setup charges as part of the access charge rate structure, however, it should do so in the context of a more comprehensive access charge reform proceeding like the one recently proposed by the Ad Hoc Telecommunications Users Committee ("Ad Hoc"). In this way, all relevant issues, such as the relationship between transport and switching costs, could be considered together.^{5/}

III. IMPOSITION OF A CALL SETUP CHARGE WOULD CONTRAVENE THE ORIGINAL INTENT OF THE COMMISSION'S ACCESS CHARGE ORDERS AND ARGUABLY VIOLATE THE COMMUNICATIONS ACT

At the time it established its access charge regime, the Commission determined that the costs associated with local

^{4/} In fact, however, very few competitive alternatives currently exist, except for the highest volume POS locations where the high capital costs of wireless technology eventually may be recovered.

^{5/} The Ad Hoc petition for rulemaking filed on April 15, 1994 asks that the Commission institute a comprehensive rulemaking proceeding to reform the rules governing access charges, jurisdictional separations, universal service, and pricing. Petition for Rulemaking of the Ad Hoc Telecommunications Users Committee to Amend Part 36 and 69 of the Commission's Rules to Effect Comprehensive Reform of the Access Charge System, RM-8480 (April 15, 1994). A number of other petitions for rulemaking also have been filed with the Commission recently concerning comprehensive changes in the access charge regime. See Petition for Rulemaking of the United States Telephone Association to Reform the Interstate Access Charge Rules, RM-8396 (September 17, 1993).

switching were recovered best through usage-sensitive charges.^{6/} The Commission, despite numerous reviews of the local switching rate elements, has never wavered from this judgement.^{7/} Moreover, on two occasions in the past, the Commission has specifically denied requests, one by Bell Atlantic and the other by U.S. West, for waiver of Section 69.106 to enable them to establish a call setup charge.^{8/} Therefore, favorable action on Pacific Bell's Petition would contravene long-standing Commission policy in this area.

Favorable action on Pacific Bell's Petition also would be inconsistent with a number of the primary goals identified by the Commission at the time it established the current access charge structure. Two of these long-standing goals are (1) to promote the efficient use of the local exchange and (2) to

^{6/} MTS/WATS Market Structure, Phase I, 93 F.C.C. 2d 241, 304-07 (1983), modified on recon., 97 F.C.C. 2d 682 (1983), modified on further recon., 97 F.C.C. 2d 834 (1984), aff'd in part and remanded in part, Nat'l Ass'n of Reg. Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985), Phase I modified on second further recon., 101 F.C.C. 2d 1222 (1985), recon. denied, 102 F.C.C. 2d 849 (1985), aff'd sub nom. American Tel. & Tel. Co. v. FCC, 832 F.2d 1285 (D.C. Cir. 1987).

^{7/} See, e.g., Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, to Conform it With Part 36, Jurisdictional Separations Procedures, 2 FCC Rcd 6447, 6455-57 (1987).

^{8/} See Bell Atlantic Telephone Companies Petition for Waiver of Sections 69.106 and 69.205 of the Commission's Rules to Permit a Call Setup Charge, 4 FCC Rcd 7210 (September 29, 1989); US West Communications, Inc. Petition for Waiver of Part 69 of the

prevent "uneconomic bypass" of the local exchange.^{9/} As demonstrated in the previous section, imposition of call setup charges would penalize the efficient use currently being made of the local exchange by providers of information services and would promote, rather than discourage, uneconomic bypass by providing a powerful incentive to POS providers to explore other, less expensive means of meeting their communications requirements, if such alternatives were available.

IV. PACIFIC BELL HAS NOT MET ITS BURDEN UNDER THE COMMISSION'S PRICE CAP RULES TO SHOW THAT ITS PROPOSAL WOULD NOT BE UNREASONABLY DISCRIMINATORY OR ADVERSELY AFFECT COMPETITION

In its Price Cap Order, the Commission explicitly recognized that the proposed restructuring of switched access rate elements subject to price cap regulation is likely to raise issues of unreasonable discrimination and adverse effects on competition, and it established special procedures for Commission review of such proposed restructurings.^{10/} In particular, the Commission required local exchange carriers ("LECs") proposing a restructuring to demonstrate that the proposal would not have an adverse effect on competition in industries subject to the LECs' market power:

LECs subject to price caps should continue to adhere to the rate structure requirements of Part 69 for the switched access elements. A primary purpose of the rate structures

^{9/} MTS and WATS Market Structure, 97 F.C.C. 2d 834, (1984).

^{10/} Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6826 (1990) ("Price Cap Order").

embodied in Part 69 is to eliminate unreasonable discrimination between service users. When these service users are interexchange carriers or enhanced service providers, these rules also promote competition in two markets in which we have concluded that a competitive market structure will promote the public interest. In the face of the significant market power retained by LECs in the provision of interstate access, rules that discourage unreasonable discrimination and its potentially adverse effect on competition should be given precedence over the benefits that might come from LECs' ability to depart from the Part 69 access rate structure.^{11/}

In the Petition, Pacific Bell does not even attempt to meet its burden of proof under the Price Cap Order. Its failure to address the proposed restructuring's potentially adverse effect on competition is a sufficient basis to dismiss the Petition summarily. It would be particularly appropriate to do so here because the potential adverse effect of Pacific Bell's proposal on electronic transaction processors is so huge. If the Petition were granted, local exchange carriers like Pacific Bell in effect would have discretion to choose the winners and losers in the enhanced service provider industry. For example, if one LEC wanted to promote POS transactions in its service territory, it could minimize the per-message call setup charge. If, on the other hand, another LEC wanted to pursue a strategy that would favor longer duration voice traffic, it could ratchet call setup charges to a sufficiently high level to drive POS transaction providers off the switched network. LEC call setup charges could

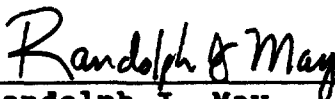
^{11/} Id.

vary by factors of two, three or more in different exchange service areas across the country. Subject to such potential LEC discrimination, POS vendors could not rationally pursue a national strategy using the public switched network. Left unchecked, the LECs' ability to discriminate unreasonably could have a serious adverse impact on the competitive state of the information service industry, especially because POS service providers currently have no realistic alternatives to the public switched network. Pacific Bell's failure to address this issue requires the Commission to deny its proposal summarily.

V. CONCLUSION

For the foregoing reasons, FFMC urges the Commission to deny Pacific Bell's Petition For Rulemaking.

Respectfully submitted,



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August 22, 1994

CERTIFICATE OF SERVICE

I, Teresa A. Pumphrey, hereby certify that a copy of the foregoing Opposition of First Financial Management Corporation has been served by hand delivery, or by first-class U.S. mail, postage prepaid, this 22nd day of August 1994 on the following:

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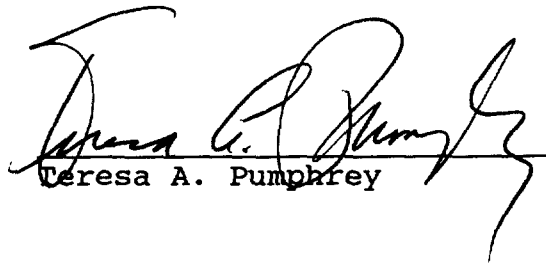
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